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13 PRODUCT PARTNERS, LLC

14
15 UNITED STATES DISTRICT COURT
16
17 CENTRAL DISTRICT OF CALIFORNIA

18 PRODUCT PARTNERS, LLC, a
19 California Limited Liability Company,

20 Plaintiff,

21 vs.

22 M. CHAN DVD STORE, a Business
23 Entity of Unknown Status; TAO
24 ZHANG, an Individual; ANGELICA
25 DAHMEN, an Individual; ROBERT
26 KOZDRON, an Individual; BETH
27 BAYNE, an Individual; TRAVIS
28 BRAWLEY, an Individual; CESAR
EUSTAQUIO, an Individual; CHERYL
MEXICO, an Individual; RON KLINE,
an Individual; GABE AGUILAR, an
Individual; GARY WATSON, an
Individual; HENRY ALVARADO, an
Individual; JOSE MARTINEZ, an

COMPLAINT FOR DAMAGES
AND DECLARATORY RELIEF:

- (1) FEDERAL TRADEMARK
INFRINGEMENT [15 U.S.C. §
1114/Lanham Act §43(a)]
(2) FEDERAL COPYRIGHT
INFRINGEMENT [17 U.S.C.
§501(a)];
(3) FALSE DESIGNATION OF
ORIGIN [15 U.S.C. §1125(a)];
(4) TRADEMARK DILUTION [15
U.S.C. §1125(c)];
(5) UNFAIR BUSINESS
PRACTICES [CALIFORNIA
BUSINESS & PROFESSIONS
CODE §17200];
(6) DECLARATORY RELIEF;

1 Individual; JAMIE WHELAN, an
2 Individual; KUNAL SHETH, an
3 Individual; SHIRLEY CARLSON, an
4 Individual; ANDERSSON LIRIANO, an
5 Individual; MEGAN HART, an
6 Individual; MICHAEL BATHAN, an
7 Individual; MIGUEL MARTINEZ, an
8 Individual; MANDA POTTHOFF, an
9 Individual; TOM HIPPS, an Individual;
10 Individual; NICHOLAS ARNOLD, an Individual;
11 TERRY COWAN, an Individual;
12 MARICRIS OMBAO, an Individual;
13 PAUL BEAUDOIN, an Individual; PJ
DISCOUNT SALES, a Business Entity
of Unknown Status; TINA ANAYA, an
Individual; JUAN GONZALEZ, an
Individual; DAVID VU, an Individual;
TRACEY SIKES, an Individual, and
Does 1-10 Inclusive,

14 Defendants.

(7) ACCOUNTING; and
(8) UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

16
17 COMES NOW, Plaintiff PRODUCT PARTNERS, LLC (hereinafter
18 "Plaintiff"), to hereby file its Complaint against M. CHAN DVD STORE, TAO
19 ZHANG, ANGELICA DAHMEN, ROBERT KOZDRON, BETH BAYNE,
20 TRAVIS BRAWLEY, CESAR EUSTAQUIO, CHERYL MEXICO, RON KLINE,
21 GABE AGUILAR, GARY WATSON, HENRY ALVARADO, JOSE MARTINEZ,
22 JAMIE WHELAN, KUNAL SHETH, SHIRLEY CARLSON, ANDERSSON
23 LIRIANO, MEGAN HART, MICHAEL BATHAN, MIGUEL MARTINEZ,
24 MANDA POTTHOFF, TOM HIPPS, NICHOLAS ARNOLD, TERRY COWAN,
25 MARICRIS OMBAO, PAUL BEAUDOIN, PJ DISCOUNT SALES, TINA
26 ANAYA, JUAN GONZALEZ, DAVID VU, TRACY SIKES, and Does 1-50,
27 inclusive (collectively "Defendants").

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PARTIES

1
2 1. Plaintiff is now, and was at the time of the filing of this Complaint
3 and at all intervening times, a California Limited Liability Company, duly
4 authorized and licensed to conduct business in California, with its principal place
5 of business in California.

6 2. Plaintiff is informed and believes that M. CHAN DVD STORE is
7 now, and was at the time of the filing of this Complaint and at all intervening
8 times, a Business Entity of Unknown Status operating on iOffer.com under user ID
9 "happyw688" with its principal place of business located at 698 Zhonghua Road,
10 Shanghai 200021, China.

11 3. Plaintiff is informed and believes that TAO ZHANG is now, and was
12 at the time of the filing of this Complaint and at all intervening times, an individual
13 operating on iOffer.com under user ID "happyw688" and residing at 698
14 Zhonghua Road, Shanghai 200021, China.

15 4. Plaintiff is informed and believes that ANGELICA DAHMEN is now,
16 and was at the time of the filing of this Complaint and at all intervening times, an
17 individual owning P.O. Box 90425, San Diego, California 92169.

18 5. Plaintiff is informed and believes that ROBERT KOZDRON is now,
19 and was at the time of the filing of this Complaint and at all intervening times, an
20 individual residing at 629 Hunters Run Boulevard., Lakeland, Florida 33809.

21 6. Plaintiff is informed and believes that BETH BAYNE is now, and was
22 at the time of the filing of this Complaint and at all intervening times, an individual
23 residing at 1520 Cliftwood Drive, Clarksville, Indiana 47129.

24 7. Plaintiff is informed and believes that TRAVIS BRAWLEY is now,
25 and was at the time of the filing of this Complaint and at all intervening times, an
26 individual residing at P.O. Box 8121, Boise, Idaho 83707.

27 8. Plaintiff is informed and believes that CESAR EUSTAQUIO is now,
28 and was at the time of the filing of this Complaint and at all intervening times, an

1 27. Plaintiff is informed and believes that PAUL BEAUDOIN is now, and
2 was at the time of the filing of this Complaint and at all intervening times, an
3 individual residing at 1279 Wilbur Avenue, Swansea, Massachusetts 02777.

4 28. Plaintiff is informed and believes that PJ DISCOUNT SALES is now,
5 and was at the time of the filing of this Complaint and at all intervening times, a
6 Business Entity of Unknown Status with its principal place of business located at
7 2791 Marblevista Boulevard, Columbus, Ohio 43204.

8 29. Plaintiff is informed and believes that TINA ANAYA is now, and was
9 at the time of the filing of this Complaint and at all intervening times, an individual
10 residing at 1255 Orcutt Road, #B36, San Luis Obispo, California 93401.

11 30. Plaintiff is informed and believes that JUAN GONZALEZ is now,
12 and was at the time of the filing of this Complaint and at all intervening times, an
13 individual residing at 1105 Central Avenue, Apt. 1, Union City, New Jersey 07087.

14 31. Plaintiff is informed and believes that DAVID VU is now, and was at
15 the time of the filing of this Complaint and at all intervening times, an individual
16 residing at 18003 SE 24th Street, Vancouver, Washington 98683.

17 32. Plaintiff is informed and believes that TRACY SIKES is now, and
18 was at the time of the filing of this Complaint and at all intervening times, an
19 individual residing at 14804 Rita Street, Kiethville, Louisiana 71047.

20 33. The true names and capacities, whether individual, corporate,
21 associate or otherwise, of Defendants herein named as Does 1-50, inclusive, are
22 unknown to Plaintiff. Plaintiff therefore sues said Defendants by such fictitious
23 names. When the true names and capacities of said Defendants have been
24 ascertained, Plaintiff will amend this pleading accordingly.

25 34. Plaintiff further alleges that Defendants, and Does 1-50, inclusive,
26 sued herein by fictitious names are jointly, severally and concurrently liable and
27 responsible with the named Defendants upon the causes of action hereinafter set
28 forth.

1 35. Plaintiff is informed and believes and thereon alleges that at all times
2 mentioned herein Defendants, and Does 1-50, inclusive, and each of them, were
3 the agents, servants and employees of every other Defendant and the acts of each
4 Defendant, as alleged herein, were performed within the course and scope of that
5 agency, service or employment.

6 **JURISDICTIONAL ALLEGATIONS**

7 36. This Court has Federal subject matter jurisdiction over this matter
8 pursuant to 28 U.S.C. §§1331 and 1338(a) and (b), by virtue of 15 U.S.C. §1051 *et*
9 *seq.*, in that the case arises out of §43(a) of the *Lanham Act* for trademark
10 infringement, copyright infringement pursuant to 17 U.S.C. §501(a), and
11 supplemental jurisdiction under 28 U.S.C. §§1367(a) and 1338 (a)(b).

12 37. Venue is proper, *inter alia*, under 28 U.S.C. §1391(b) because on
13 information and belief, a substantial part of the events or omissions giving rise to
14 the claim occurred in this judicial district.

15 38. Personal jurisdiction exists over Defendants because on information
16 and belief, Defendants conduct business in California and in this judicial district,
17 or otherwise avail themselves of the privileges and protections of the laws of the
18 State of California, such that this Court's assertion of jurisdiction over Defendants
19 does not offend traditional notions of fair play and due process.

20 **GENERAL ALLEGATIONS**

21 39. Plaintiff is a health, wellness and fitness company involved in the
22 development, production, sale, and distribution of in-home fitness, weight loss, and
23 health products. Plaintiff owns the "P90X" mark used in connection with its
24 "P90X extreme home fitness kit" consisting of a 13 DVD box set. Plaintiff has
25 been using the mark since July 2003. Plaintiff first distributed the "P90X" mark in
26 January 2005.

27 40. Plaintiff owns registered United States Trademarks for the "P90X"
28 marks under U.S. Reg. No. 2843063 (registered May 18, 2004), U.S. Reg. No.

1 2869490 (registered August 3, 2004), U.S. Reg. No. 2869491 (registered August 3,
2 2004), U.S. Reg. No. 2973356 (registered July 19, 2005), U.S. Reg. No. 3444723
3 (registered June 10, 2008), and U.S. Reg. No. 3669400 (registered August 18, 2009)
4 attached herewith as Exhibits "A," "B," "C," "D," "E," and "F," respectively.

5 41. Plaintiff also owns registered trademarks in the "P90X" marks in the
6 following foreign countries or territories: Benelux, Canada, European Community,
7 Hungary, International Registration – Madrid Protocol Only, Ireland, Mexico,
8 Turkey, and United Kingdom.

9 42. Plaintiff owns a United States Copyright for the "P90X extreme home
10 fitness kit" under Certificate of Registration number PA 0001324687 (effective
11 date of March 23, 2006), attached herewith as Exhibit "G."

12 43. Plaintiff owns an additional United States Copyright for the
13 "P90X.com" website under Certificate of Registration number TX 0006569236
14 (effective date of May 7, 2007), attached herewith as Exhibit "H."

15 44. Plaintiff owns additional United States Copyrights for the "P90X
16 Version 2.3 Infomercial" under Certificate of Registration number PA 0001606153
17 (effective date December 21, 2007), and for the "P90X Infomercial Version 3"
18 under Certificate of Registration number PA 0001609963 (effective date August
19 25, 2008), attached herewith as Exhibits "I" and "J," respectively.

20 45. Plaintiff has spent substantial time, money and effort in developing
21 consumer recognition and awareness of its "P90X" marks. Plaintiff has spent over
22 seventy-four million dollars (\$74,000,000.00) to air its television infomercials
23 alone, and over one million dollars (\$1,000,000.00) on print and internet
24 advertising. Dating back to inception in January 2005, the "P90X" infomercials
25 have aired over 109,000 times.

26 46. According to Infomercial Monitoring Service, Inc. (IMS), a monitor of
27 national broadcast, cable and satellite television for the direct response television
28 industry, Plaintiff's "P90X" infomercials have consistently been ranked no. 1 on

1 the IMS Top 25 list, with over 135 consecutive weeks in a row on the Top 25 list.

2 47. Through the extensive use of the "P90X" marks, Plaintiff has built up
3 and developed significant goodwill in the "P90X" marks. A wide array of
4 newspapers, magazines and television networks (including *US*, *People*, the *Atlanta*
5 *Journal-Constitution*, the *Los Angeles Times*, *InTouch Weekly*, and *E!*
6 *Entertainment*) have featured stories in which prominent celebrities and
7 professional athletes (including Demi Moore, Ashton Kutcher, Sheryl Crow,
8 Poppy Montgomery and Matt Diaz) have enthusiastically described their success
9 with the "P90X Extreme Home Fitness Kit."

10 48. Defendants use, amongst other things, the Internet auction website
11 known as iOffer.com to sell and distribute products, including pirated DVDs, to
12 consumers. At any given time, there are millions of items listed on iOffer for bid
13 or purchase by its more than one million registered users. Buyers have the option
14 to purchase items in an auction-style format where users bid on products or items
15 can be purchased at a fixed price. Using another iOffer feature referred to as
16 "Feedback," users who have made a purchase on iOffer are given the opportunity
17 to post positive, neutral or negative reviews in relation to their buying experience.
18 While feedback can give some indication of sales volume, actual sales may far
19 exceed the number of feedback entries a seller receives.

20 49. On October 8, 2009, in its ongoing investigation of counterfeit sales
21 of the "P90X" product, Plaintiff purchased a counterfeit "P90X extreme home
22 fitness kit" from iOffer user ID "happyw688," for a cost of \$42.50 charged to the
23 PayPal electronic payment account of Plaintiff's investigator. A true and correct
24 copy of the website purchase receipt is attached hereto as Exhibit "K."

25 50. The product purchased from iOffer user ID "happyw688" was
26 inspected by Plaintiff to determine authenticity. Plaintiff's inspection of the
27 purchased item using security measures confirmed that the item sold to the
28 investigator was in fact a counterfeit "P90X extreme home fitness kit".

1 51. On or about August 9, 2009, Plaintiff is informed and believes that
2 ANGELICA DAHMEN, under iOffer user ID "angelangel," engaged in a
3 transaction with iOffer user ID "happyw688" in the sum of \$255.00 involving
4 multiple units of counterfeit "P90X Extreme Home Fitness Kits."

5 52. On or about August 26, 2009, Plaintiff is informed and believes that
6 ROBERT KOZDRON, under iOffer user ID, "bitcom," engaged in a transaction
7 with iOffer user ID "happyw688" in the sum of \$1,300.00 involving multiple units
8 of counterfeit "P90X Extreme Home Fitness Kits."

9 53. On or about June 26, 2009, Plaintiff is informed and believes that
10 BETH BAYNE, under iOffer user ID, "bjbayne08," engaged in a transaction with
11 iOffer user ID "happyw688" in the sum of \$132.00 involving multiple units of
12 counterfeit "P90X Extreme Home Fitness Kits."

13 54. On or about June 30, 2009, Plaintiff is informed and believes that
14 TRAVIS BRAWLEY, under iOffer user ID, "cardfelon," engaged in a transaction
15 with iOffer user ID "happyw688" in the sum of \$150.00 involving multiple units
16 of counterfeit "P90X Extreme Home Fitness Kits."

17 55. On or about July 23, 2009, Plaintiff is informed and believes that
18 CESAR EUSTAQUIO, under iOffer user ID, "cmustangc," engaged in a
19 transaction with iOffer user ID "happyw688" in the sum of \$255.00 involving
20 multiple units of counterfeit "P90X Extreme Home Fitness Kits."

21 56. On or about July 15, 2009, Plaintiff is informed and believes that
22 CHERYL MEXICO, under iOffer user ID, "disneyvaultcollection," engaged in a
23 transaction with iOffer user ID "happyw688" in the sum of \$134.00 involving
24 multiple units of counterfeit "P90X Extreme Home Fitness Kits."

25 57. On or about August 15, 2009, Plaintiff is informed and believes that
26 RON KLINE, under iOffer user ID, "firefy911," engaged in a transaction with
27 iOffer user ID "happyw688" in the sum of \$1,270.00 involving multiple units of
28 counterfeit "P90X Extreme Home Fitness Kits."

1 58. On or about August 3, 2009, Plaintiff is informed and believes that
2 GABE AGUILAR, under iOffer user ID, "gabea101," engaged in a transaction
3 with iOffer user ID "happyw688" in the sum of \$255.00 involving multiple units
4 of counterfeit "P90X Extreme Home Fitness Kits."

5 59. On or about August 13, 2009, Plaintiff is informed and believes that
6 GARY WATSON, under iOffer user ID, "getem1," engaged in a transaction with
7 iOffer user ID "happyw688" in the sum of \$140.00 involving multiple units of
8 counterfeit "P90X Extreme Home Fitness Kits."

9 60. On or about June 24, 2009, Plaintiff is informed and believes that
10 HENRY ALVARADO, under iOffer user ID, "henryfifa10," engaged in a
11 transaction with iOffer user ID "happyw688" in the sum of \$174.00 involving
12 multiple units of counterfeit "P90X Extreme Home Fitness Kits."

13 61. On or about August 10, 2009, Plaintiff is informed and believes that
14 JOSE MARTINEZ, under iOffer user ID, "hozer27," engaged in a transaction with
15 iOffer user ID "happyw688" in the sum of \$2,460.00 involving multiple units of
16 counterfeit "P90X Extreme Home Fitness Kits."

17 62. On or about September 9, 2009, Plaintiff is informed and believes that
18 JAMIE WHELAN, under iOffer user ID, "kimianchadbear," engaged in a
19 transaction with iOffer user ID "happyw688" in the sum of \$165.00 involving
20 multiple units of counterfeit "P90X Extreme Home Fitness Kits."

21 63. On or about July 18, 2009, Plaintiff is informed and believes that
22 KUNAL SHETH, under iOffer user ID, "ksheth19," engaged in a transaction with
23 iOffer user ID "happyw688" in the sum of \$250.00 involving multiple units of
24 counterfeit "P90X Extreme Home Fitness Kits."

25 64. On or about June 13, 2009, Plaintiff is informed and believes that
26 SHIRLEY CARLSON, under iOffer user ID, "lifeisgood09," engaged in a
27 transaction with iOffer user ID "happyw688" in the sum \$140.00 of involving
28 multiple units of counterfeit "P90X Extreme Home Fitness Kits."

1 65. On or about August 9, 2009, Plaintiff is informed and believes that
2 ANDERSSON LIRIANO, under iOffer user ID, "liriano07," engaged in a
3 transaction with iOffer user ID "happyw688" in the sum of \$260.00 involving
4 multiple units of counterfeit "P90X Extreme Home Fitness Kits."

5 66. On or about July 24, 2009, Plaintiff is informed and believes that
6 MEGAN HART, under iOffer user ID, "mh2k5," engaged in a transaction with
7 iOffer user ID "happyw688" in the sum of \$500.00 involving multiple units of
8 counterfeit "P90X Extreme Home Fitness Kits."

9 67. On or about June 15, 2009, Plaintiff is informed and believes that
10 MICHAEL BATHAN, under iOffer user ID, "Michael_bathan," engaged in a
11 transaction with iOffer user ID "happyw688" in the sum of \$65.00 involving
12 multiple units of counterfeit "P90X Extreme Home Fitness Kits."

13 68. On or about August 30, 2009, Plaintiff is informed and believes that
14 MIGUEL MARTINEZ, under iOffer user ID, "mmartinez1799," engaged in a
15 transaction with iOffer user ID "happyw688" in the sum of \$150.00 involving
16 multiple units of counterfeit "P90X Extreme Home Fitness Kits."

17 69. On or about July 8, 2009, Plaintiff is informed and believes that
18 MANDA POTTHOFF, under iOffer user ID, "mpotth," engaged in a transaction
19 with iOffer user ID "happyw688" in the sum of \$1,000.00 involving multiple units
20 of counterfeit "P90X Extreme Home Fitness Kits."

21 70. On or about June 13, 2009, Plaintiff is informed and believes that
22 SHIRLEY CARLSON, under iOffer user ID, "lifeisgood09," engaged in a
23 transaction with iOffer user ID "happyw688" in the sum of \$140.00 involving
24 multiple units of counterfeit "P90X Extreme Home Fitness Kits."

25 71. On or about July 15, 2009, Plaintiff is informed and believes that
26 TOM HIPPS, under iOffer user ID, "mybiz835," engaged in a transaction with
27 iOffer user ID "happyw688" in the sum of \$255.00 involving multiple units of
28 counterfeit "P90X Extreme Home Fitness Kits."

1 72. On or about August 26, 2009, Plaintiff is informed and believes that
2 NICHOLAS ARNOLD, under iOffer user ID, "narnold83," engaged in a
3 transaction with iOffer user ID "happyw688" in the sum of \$280.00 involving
4 multiple units of counterfeit "P90X Extreme Home Fitness Kits."

5 73. On or about September 3, 2009, Plaintiff is informed and believes that
6 TERRY COWAN, under iOffer user ID, "ness31," engaged in a transaction with
7 iOffer user ID "happyw688" in the sum of \$288.00 involving multiple units of
8 counterfeit "P90X Extreme Home Fitness Kits."

9 74. On or about May 31, 2009, Plaintiff is informed and believes that
10 MARICRIS OMBAO, under iOffer user ID, "nicethings01," engaged in a
11 transaction with iOffer user ID "happyw688" in the sum of \$137.50 involving
12 multiple units of counterfeit "P90X Extreme Home Fitness Kits."

13 75. On or about July 27, 2009, Plaintiff is informed and believes that
14 PAUL BEAUDOIN, under iOffer user ID, "pbsw9," engaged in a transaction with
15 iOffer user ID "happyw688" in the sum of \$375.00 involving multiple units of
16 counterfeit "P90X Extreme Home Fitness Kits."

17 76. On or about August 31, 2009, Plaintiff is informed and believes that
18 PJ DISCOUNT SALES, under iOffer user ID, "pjdiscountsales," engaged in a
19 transaction with iOffer user ID "happyw688" in the sum of \$325.00 involving
20 multiple units of counterfeit "P90X Extreme Home Fitness Kits."

21 77. On or about September 7, 2009, Plaintiff is informed and believes that
22 TINA ANAYA, under iOffer user ID, "slo3sons," engaged in a transaction with
23 iOffer user ID "happyw688" in the sum of \$105.00 involving multiple units of
24 counterfeit "P90X Extreme Home Fitness Kits."

25 78. On or about July 1, 2009, Plaintiff is informed and believes that
26 JUAN GONZALEZ, under iOffer user ID, "softballmadness," engaged in a
27 transaction with iOffer user ID "happyw688" in the sum of \$265.00 involving
28 multiple units of counterfeit "P90X Extreme Home Fitness Kits."

1 79. On or about July 13, 2009, Plaintiff is informed and believes that
2 DAVID VU, under iOffer user ID, "tater714," engaged in a transaction with iOffer
3 user ID "happyw688" in the sum of \$375.00 involving multiple units of counterfeit
4 "P90X Extreme Home Fitness Kits."

5 80. On or about June 21, 2009, Plaintiff is informed and believes that
6 TRACY SIKES, under iOffer user ID, "twsikes," engaged in a transaction with
7 iOffer user ID "happyw688" in the sum of \$250.00 involving multiple units of
8 counterfeit "P90X Extreme Home Fitness Kits."

9 81. Defendants use images confusingly similar or identical to Plaintiff's
10 trademarks, to confuse consumers and aid in the promotion and sales of their
11 unauthorized product. Defendants' use of Plaintiff's trademarks include importing,
12 advertising, displaying, distributing, selling and/or offering to sell unauthorized
13 copies of Plaintiff's "P90X" product. Defendants' use began long after Plaintiff's
14 adoption and use of its trademarks, and after Plaintiff obtained the copyright and
15 trademark registrations alleged above. Neither Plaintiff nor any authorized agents
16 have consented to Defendants' use of Plaintiff's "P90X" trademarks.

17 82. Defendants' actions have confused and deceived, or threatened to
18 confuse and deceive, the consuming public concerning the source and sponsorship
19 of the unauthorized copies of Plaintiff's "P90X" product, sold and distributed by
20 Defendants. By its wrongful conduct, Defendants have traded upon and
21 diminished Plaintiff's goodwill. Furthermore, the sale and distribution of
22 counterfeit goods by Defendants has infringed upon Plaintiff's federally registered
23 trademarks and copyrights.

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